

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-113927-08
Date:
May 22, 2008

In Re:

Legend

X =

Y =

Z =

Trust =
EIN =

Sub- =
account A
EIN =

Date 1 =

Tort =

A =

Dear _____ :

This letter responds to a request for a letter ruling that X payments (subject to Y) up to Z from Sub-account A are not reportable under § 6041 of the Internal Revenue Code because the payments are excludable from the gross income of the recipients as damages received on account of a personal physical injury or physical sickness under § 104(a)(2).

FACTS

Trust was established on Date 1 to process, liquidate, and pay personal physical injury claims (Claims) resulting from Tort. Trust consists of two sub-accounts. Sub-account A is a qualified settlement fund under § 468B of the Code and § 1.468B-1 of the Income Tax Regulations. Claimants may receive X payments (subject to Y) from Trust and Sub-account A in satisfaction of their Claims against A for Tort.

LAW AND ANALYSIS

Section 61 provides that, except as otherwise provided by law, gross income includes all income from whatever source derived. Accordingly, a taxpayer must include in gross income an accession to wealth, unless it is excluded from income by another section of the Code.

Section 104(a)(2) excludes from gross income the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sum or as periodic payments) on account of personal physical injuries or physical sickness.

Section 1.104-1(c) defines the term “damages received (whether by suit or agreement)” as an amount received (other than workmen’s compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution.

Section 6041 requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, to file an information return with the Service and to furnish an information statement to the payee.

Section 1.6041-1(c) provides that income is fixed when it is paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. Section 1.6041-1(a)(2) requires a payor to report § 6041 amounts on Form 1099.

CONCLUSIONS

Based solely on the submitted documents and representations made by Trust, we conclude that X payments (subject to Y) up to Z from Sub-account A are excluded from gross income under § 104(a)(2) as damages received on account of a personal physical injury or sickness. We also conclude that Trust and Sub-account A are not required to issue an information return for X payments (subject to Y) up to Z paid to a claimant.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted under penalty of perjury. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Donna J. Welsh
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: